

JACQUELINE BALEN

IBLA 83-604

Decided June 15, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. A MC 117316.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or notice of intention to hold the claim is not filed in both places, for whatever reasons, the claim is conclusively presumed to be abandoned.

2. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of pertinent statutes and regulations duly promulgated thereunder.

APPEARANCES: Jacqueline Balen, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jacqueline Balen <sup>1/</sup> appeals the April 15, 1983, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented Laguna placer mining claim, A MC 117316, abandoned and void because no proof of labor or notice of intention to hold the claim was filed with BLM on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The claim was located in December 1980, and was recorded with BLM on December 16, 1980, as required by FLPMA. The record does not show any proof of labor or notice of intention to hold the claim as being filed with BLM in calendar year 1981.

Appellant states that the requirement for assessment work did not attach to her claim until September 1, 1981. Work on the claim was done under a permit granted by the United States Forest Service. She was unaware that she was required to file a notice of intention to hold the claim in 1981.

Section 314 of FLPMA provides in part:

Sec. 314(a) \* \* \* The owner of an unpatented lode or placer mining claim located after the date of this Act [October 21, 1976] shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work); an affidavit of assessment work performed thereon; or a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau [of Land Management] designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

\* \* \* \* \*

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner \* \* \*.

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<sup>1/</sup> The names of the locators shown on the location notice are: Jacqueline Balen, Kay Samuelson, Kathy Samuelson, Karen Samuelson, Kim Samuelson, Grover Bonham, Dennis Ingham, and Mark Johnson.

[1] Thus, the owner of an unpatented mining claim located in 1980 must file either a proof of labor or a notice of intention to hold the claim, both in the county recorder's office where the location notice is of record and in the proper office of BLM, prior to December 31, 1981. Where, as to this claim, no proof of labor or notice of intention to hold the claim was filed with BLM in 1981, the mining claim was properly deemed to be abandoned and void. As neither proof of labor or a notice of intention to hold the claim was filed, the statutory consequences of conclusive presumption of abandonment attached by operation of law without any action or decision by any administrative official. Homestake Mining Co., 73 IBLA 47 (1983); Eleanor A. Belser, 72 IBLA 232 (1983); Gregory A. Voetsch, Sr., 69 IBLA 124 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). In enacting FLPMA, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, *supra*.

[2] All persons who deal with the Government are presumed to have knowledge of the law and regulations duly promulgated thereunder. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976).

Appellant may wish to consult with BLM about the possibility of relocating this claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

R. W. Mullen  
Administrative Judge

